



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

December 16, 1959

Mr. E. B. Camiade
Chief Accountant
Texas State Parks Board
Austin, Texas

Opinion No. WW-758

Re: Authority of the State
Parks Board to withdraw
shares of stock from
the Varner-Hogg State
Park Trust Account No.
941 for the purpose of
sale or trade.

Dear Mr. Camiade:

Your request for an opinion reads as follows:

"Enclosed is a photocopy of a letter dated December 19, 1958 from Alice N. Hanszen to the State Parks Board concerning the gift of a stock certificate evidencing 1,425 shares of Fifteen Oil Company Stock.

"Based on Attorney General Opinion number WW-122 the State Parks Board accepted said stock. The stock was deposited with the State Treasury in Varner-Hogg State Park Trust Account number 941, an account that was created for another stock donation (the stock donation referred to in said opinion number WW-122). The reason for using the same Trust Account was because of the similarity of the use for which the two separate donations were made--operation and maintenance of Varner-Hogg State Park.

"However, the donors are different parties and the letter covering the gift of the Fifteen Oil Company Stock provides for the use of the proceeds from the sale of said shares as well as any income realized therefrom.

"Your opinion is respectfully requested on the following questions:

- "1. Does the State Parks Board have the authority to withdraw said 1,425 shares from said Varner-Hogg State Park Trust Account number 941 for the

purpose of sale and then redeposit with the State Treasury the funds acquired from the sale thereof;

- "2. Does the State Parks Board have the authority to withdraw said 1,425 shares from said Varner-Hogg State Park Trust Account number 941 for the purpose of trade or exchange for other stock and then redeposit with the State Treasury the stock acquired under the trade transaction?"

Opinion No. WW-122, referred to in your letter, concluded that the State Parks Board has implied power to accept gifts of personal property for the purpose of maintaining a system of public parks.

The donor's transmittal letter accompanying this gift of stock contained the following language:

"It is my intention and desire in making this gift of the shares evidenced by said certificate, that you use the proceeds from the sale of said shares, as well as any income realized therefrom, for current expenses and costs incurred in the operation, maintenance and upkeep of what has formerly been known as the Varner Plantation House and the premises on which the same is situated and which is now known as the Varner-Hogg State Park, near the Town of West Columbia, in Brazoria County, Texas."

The Parks Board here occupies the position of a trustee, and as such is subject to rules of law governing trustees generally.

The quoted portion of the settlor's letter shows that a sale of these shares by the Board was contemplated with approval. This language is sufficient authorization for the sale of the donated shares by the trustee; therefore your first question is answered "yes."

However, it does not follow that the Board also has the power to trade or exchange the stock for other securities. The rule is that "A mere exchange of property is not a valid exercise of the power to sell. . . ." (Corpus Juris Secundum, Vol. 84, Sec. 288 (f), p. 432.) Again, "A trustee has no power to invest trust funds unless such power has

been expressly or impliedly conferred on him; and power to reinvest will not be inferred merely from a power to sell." (Tex.Jur., Vol. 42, Sec. 98, p. 713)

A trustee's investment power must depend solely upon the settlor's intentions, as determinable from the trust instrument. (C.J.S., Vol. 84, Sec. 325, p. 521.) The instrument here involved is silent as to any power other than the power to sell. The terms of the trust instrument do not empower the State Parks Board to reinvest proceeds from the sale of the stock in question. Furthermore, without specific statutory authority the Board has no general authority to invest its funds. (See A.G. Opinion No. WW-725, November 16, 1959.) We therefore answer your second question "no."

SUMMARY

The State Parks Board has the authority to withdraw 1,425 shares of donated stock from the Varner-Hogg State Park Trust Account No. 941 and sell the shares, redepositing the proceeds from such sale in that account. The Board does not have the authority to trade or exchange these shares for other stock.

Very truly yours,

WILL WILSON
Attorney General

By 
James R. Irion
Assistant

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APPROVED:

OPINION COMMITTEE:
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REVIEWED FOR THE ATTORNEY GENERAL

By: Leonard Passmore